

SOUTH DAKOTA STATE RAILROAD BOARD MEETING

January 20, 2016 @ 11:00 AM

DOT Building – Commission/Boardroom

Pierre, South Dakota

MEMBERS: Todd Yeaton, Chair  
Carl Anderson via phone  
Jeff Burket  
Jerry Cope via phone  
Sheldon Cotton via phone  
Gary Doering  
Harlan Quenzer

OTHERS: Alex Huff, Bill Ferguson, Carey Bretsch, Andy Kankin, and Randy Englund

PHONE: Jack Parliament, Chris Brozik, Terry Carter, and Jeff Cooley

STAFF: Darin Bergquist, Joel Jundt, Bruce Lindholm, Misty Siedschlaw, Kellie Beck, Bill Nevin, Bonnie Olson, Lynn Kennison and Tessa Wenner

**Agenda Items:**

Call to order

- 1) Approve the minutes of meeting on December 16, 2015
- 2) Consideration of Marshall County RRA lease and sub-lease agreements
- 3) Consideration of bid opening of surplus of railroad bridge timber
- 4) Consideration of Reliance Rail LLC option to lease, siding removal, and lease
- 5) Consideration of Amendment #3 to A & R Land Services, Inc. contract #910944
- 6) Consideration of Dakota Southern Railway Company's in-kind match agreement
- 7) Consideration of Napa to Platte lease extension
- 8) Update on MRC line project
- 9) Update on TIGER 2015 RCP&E project

Chair Yeaton called the regular meeting of the South Dakota State Railroad Board (the "Board") to order at 11:00 AM with a quorum present.

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- 1) Motion by Burket, second by Cotton, to approve the December 16, 2015 Railroad Board meeting minutes. Motion carried by roll call vote (all aye).

**Bruce Lindholm, Office of Air, Rail and Transit**

- 2) Consideration of Marshall County RRA lease and sub-lease agreements

Lindholm provided information regarding the Marshall County Regional Railroad Authority lease and sub-lease. The discussion included changing the payment language and effective date of both documents.

Motion by Cotton, second by Doering, to approve Marshall County lease and sub-lease agreements with the following items changed in the agreements:

1. Revise Section 19 of the lease agreement with Marshall County Regional Railroad Authority and Section 18 of the sublease agreement with Dakota, Missouri Valley & Western, Inc. to allow for the renegotiation of the rent in the event car storage occurs; and,
2. Change the effective date of the agreements from January 1, 2015, to January 1, 2016, and change the payment section so that the first rental payment under the new lease and sublease agreements would not be due until 2017.

Motion carried by roll call vote (all aye)

- 3) Consideration of bid opening of surplus of railroad bridge timber

Lindholm provided information from the two bids that were received. James Schaefer provided the highest bid of \$4,000.00.

Motion by Burket, second by Doering, to award a purchase agreement to James Schaefer in the amount of \$4,000.00 for surplus railroad bridge timber consistent with the terms of the bid documents.

Motion carried by roll call vote (all aye)

- 4) Consideration of Reliance Rail LLC option to lease, siding removal, and lease

Lindholm provided information concerning Reliance Rail LLC's counterproposal to enter into an option to lease rather than a lease agreement. The rental rate would remain the same during the option period.

Motion by Quenzer, second by Burket, to approve the Reliance Rail LLC option to lease, siding removal, and lease.

Motion carried by roll call vote (all aye).

5) Consideration of Amendment #3 to A & R Land Services, Inc. contract #910944

Lindholm informed the Board, moving forward the Department would be bringing railroad administrative decisions to the Board. Lindholm requested approval of Amendment #3 to A & R Land Services, Inc. contract #910944.

Motion by Anderson, second by Doering, to authorize the Department to enter into Amendment #3 to A & R Land Services, Inc. contract #910944, to add an additional \$15,000 to the agreement to complete the services required under the current agreement.

Motion carried by roll call vote (all aye).

**Darin Bergquist, Secretary of South Dakota Department of Transportation**

6) Consideration of Dakota Southern Railway Company's in-kind match agreement

Secretary Bergquist briefed the Board on the pending agreement with Dakota Southern Railway Company. As part of the MRC II Tiger Grant application, Dakota Southern Railway Company pledged \$1 million dollars of work towards the project. In May 2015, the Board approved an agreement with Dakota Southern Railway Company documenting the items of work to be completed and agreeing to the \$1 million value for that work. In July 2015, this agreement was incorporated into the overall funding package for the project.

Governor Dugaard did not concur with the proposed agreement because (1) some of the work contemplated under the agreement was later awarded to other contractors as part of the bid package for the project; and (2) the agreement was prospective in nature as to the types and amounts of work to be done.

Secretary Bergquist requested the Board adopt a process for this and future situations where the Board would approve the types of work to be done, but the value for that work would not be established until the work was completed and exact quantities were known. The agreed upon value for this type of work will not be presented to the Board until reviewed by a third party from outside the Department who is knowledgeable regarding the fair market value for work of this nature.

Motion by Burket, second by Doering, to approve a resolution adopting the process recommended by Secretary Bergquist as follows:

1. The Department will present to the Board for approval a memorandum of understanding with the party providing the in-kind match work detailing the types of work to be performed on a project;

2. Once work is completed, the Department will have a review completed by a third party from outside the Department who is knowledgeable regarding the fair market value for work of this nature;
3. The Department will present to the Board for approval the value of the work to be considered as in-kind match; and,
4. The Department will provide the party that performed the work a letter detailing the work performed and a value for the work as approved by the Board.

Motion carried by roll call vote (all aye).

Secretary Bergquist requested the Board authorize the Department to enter into a memorandum of understanding with Dakota Southern Railway Company memorializing the new process of establishing the value for work to be performed on the MRC II project and identifying the types of work for which credit will be given.

Motion by Burket, second by Quenzer authorizing the Department to enter into an memorandum of understanding based on the new process outlined above as requested by Secretary Bergquist.

Motion carried by roll call vote (all aye).

#### 7) Consideration of Napa to Platte lease extension

Secretary Bergquist requested the Board approve a six month lease with Dakota Southern Railway Company for the Napa to Platte line. Secretary Bergquist is continuing to work with the Governor's Office on reviewing a variety of legal issues associated with the Board's granting of a long term lease directly to Dakota Southern Railway Company.

Motion by Cotton, second by Burket, to approve a six month lease with Dakota Southern Railway Company for the Napa to Platte line.

Motion carried by roll call vote (all aye).

#### 8) Update on MRC line project

Lindholm updated the Board on the status of the MRC project. Lindholm stated the Missouri River Bridge was nearly complete, as well as the smaller bridges east of Reliance, and the culvert lining has been completed. There remains some minor rip rap work east of Reliance and some clean-up work, both of which are the responsibility of the culvert lining contractor. Koppers Railroad Structures, Inc., the bridge contractor, is planning on bringing in additional people to complete the project

by March 31, 2016. Railworks, LLC is planning on mobilizing back to the project March 1, 2016, weather permitting.

9) Update on TIGER 2015 RCP&E project

Lindholm updated the Board on the status of the TIGER 2015 Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E) project. Because acquisition of professional services is required to comply with the Brooks Act, the Department will contract with Civil Design, Inc., for civil engineering services and HDR, Inc., for environmental services for the project. The Department has a process that complies with the Brooks Act and has these firms under contract already. The payment for these services will be part of the state match. The Department will review and approve consultant invoices before forwarding them on to be paid by the Governor's Office of Economic Development (GOED). The state match for these projects will be paid out of Future Funds by GOED.

Lindholm reported that the purchase of steel for the project will happen ahead of the grant agreement and the cost will be paid by RCP&E as part of their match. The Federal Railroad Administration is in agreement with this purchase ahead of the grant agreement.

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The meeting was adjourned at 12:20 PM upon a motion for adjournment by Burket, second by Anderson.

Next meeting is scheduled for February 17, 2016, at 11:00 a.m.